

REMARKS

The Office Action of January 10, 2003 has been studied in detail along with the reference applied and cited by the Examiner. In response, the claims are presented without amendment for reconsideration in light of the following arguments in support of patentability. In addition, applicant appreciates the indication of allowable subject matter, particularly with respect to claims 7-11, 46, and 47. Reconsideration of the finality of the January 20, 2003 Office Action is also respectfully requested. For the reasons set forth in greater detail below, the application is deemed to be in condition for allowance.

Turning first to the issue regarding the finality of the Office Action, applicant respectfully requests that the finality be removed. The claims are drawn to the same invention claimed in the prior application as noted by the examiner. However, these claims could not have been finally rejected on the grounds and art of record in the next Office Action since the newly submitted Stevens-Wright, et al., U.S. Patent No. 5,462,527 patent (the '527 patent) was not made of record until the Request for Continued Examination (RCE) filed by the applicant. Particularly, applicant filed an Information Disclosure Statement and the RCE in association with the Petition to remove the allowed application from issue. It is respectfully submitted that this is the first time the Examiner has rejected the claims on the basis of the '527 patent and applicant should not be relegated to a single opportunity to respond to the rejections based on the '527 patent. In fact, this is precisely the reason that the RCE was filed. Applicant should not be penalized for removing the allowed claims from issuance, submitting an IDS, and paying an additional RCE fee to ensure consideration and complete examination of the claims in light of the new art.

Although applicant appreciates the indication of the allowable subject matter and is willing to rewrite the claims in independent form including the limitations of the base claim and any intervening claims at some juncture, this action has not been presently been taken since all of the claims as presently pending are deemed to be allowable over the prior art for the reasons presented below.

With regard to particular reasons enumerated by the Examiner with regard to why claims 7, 11, and 46 are not deemed to be taught by the prior art, to the extent that certain

limitations or combinations not found in the prior art are present in each and every claim, whether or not specific language to that effect is found in every claim, the applicant notes that the record as a whole must be considered and, to the extent that it is clear and complete, it shall control the interpretation of any and all claims. It is improper to state that the claim is allowed by importing an interpretation into the claim in relation to the prior art that is imprecise, inaccurate, and places an unwarranted interpretation upon the claim.

With regard to the substantive rejection of claims 1, 6, and 41 as being anticipated under 35 U.S.C. §102 by the '527 patent, and claims 2-5, 42-45, 48, and 49 as being unpatentable under 35 U.S.C. §103 over the '427 patent, these rejections are respectfully traversed. Independent claims 1 and 41 each require a pair of "flexible tension/compression members" which in the present application refers to components in the form of wires 11, 12. As described in detail in the present specification, and also set forth in claims 1 and 41, when the actuator is moved in opposite directions, longitudinal tensioning of a first tension/compression member occurs and simultaneous longitudinal compression of the second of the tension/compression member occurs to effect lateral displacement of the catheter distal end. Similarly, movement of the actuator in the opposite direction effects longitudinal tensioning of the other, or second, of the tension/compression members and longitudinal compressing of the first of the tension/compression members. The '527 patent does not have tension/compression members - contrary to the Examiner's assertion. Rather, cables 32a-32d in the '527 patent cooperate with the thumbwheel actuator 92. When rotated in a desired direction, one of the cables is placed in tension while the other cable goes slack. This is best illustrated in Figure 13a-13f where, upon deflection of the distal end of the catheter, the non-tensioned cable goes slack (see 32e in Figure 13a, cable 32a in Figure 13c, cable 32d in Figure 13d, and cable 32b in Figure 13f). In other words, in the '527 patent, when one or more of the cables is pulled and placed in tension, the combination of components 19, 16, 15, and 22 behave as a compressive member. This combination of components extend from the distal end of the catheter all the way to the proximal end at the catheter handle. Therefore, pulling the cables of the '527 patent does not impart compressive forces in another cable.

In contrast, the side-by-side wires 11, 12 of the present application operate as tension and compression members as described in detail in the present specification. Accordingly, independent claims 1 and 41 already define over the prior art, whether taken singly or in combination with any of the other prior art of record. Accordingly, all of the pending claims 1-11 and 41-49 are deemed to be in condition for allowance.

If the Examiner believes that further explanation is required, the distinctions noted above are similar to those set forth with regard to Swanson '409 and Lunsquist '088 in the 132 Declaration that accompanied the Amendment of October 19, 2001.

All formal and informal matters having been addressed, this application is in condition for allowance. Early notice to that effect is solicited.

Respectfully submitted,

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